

MONTANA LEGISLATIVE HISTORY

Chapter 497 19 85

Bill H _____ S 258 Original bill & history X c

H. Committee on NATURAL RESOURCES S. Committee on NATURAL RESOURCE

Hearing Date(s) 3/20 X c

Hearing Date(s) 2/6 X c

EXEC ACTION 3/25 X c

2/13 X c

_____ c

2/18 X c

_____ c

EXEC ACTION 2/20 X c

Date Out _____ c

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

SENATE FINAL STATUS

4/11 SIGNED BY SPEAKER

4/12 TRANSMITTED TO GOVERNOR

4/15 SIGNED BY GOVERNOR

CHAPTER NUMBER 487 EFFECTIVE DATE: 4/15/85

SB 256 INTRODUCED BY B. BROWN, HARP, LYBECK, COHEN
TO CHANGE THE METHOD OF CALCULATING ANB FOR SCHOOL
FUNDING PURPOSES

1/25 INTRODUCED

1/26 REFERRED TO EDUCATION & CULTURAL RESOURCES

2/06 HEARING

2/07 COMMITTEE REPORT-BILL PASS AS AMENDED

2/11 2ND READING PASS 50 0

2/13 3RD READING PASS 50 0

TRANSMITTED TO HOUSE

2/27 REFERRED TO EDUCATION & CULTURAL RESOURCES

3/18 HEARING

DIED IN COMMITTEE

SB 257 INTRODUCED BY DANIELS
CHANGE TIME FOR TRIAL LIMITATION IN DETAINER LAW
BY REQUEST OF DEPARTMENT OF INSTITUTIONS

1/25 INTRODUCED

1/26 REFERRED TO JUDICIARY

2/12 HEARING

2/12 COMMITTEE REPORT-BILL DO PASS

2/15 2ND READING PASS 50 0

2/18 3RD READING PASS 48 0

TRANSMITTED TO HOUSE

2/27 REFERRED TO JUDICIARY

3/15 HEARING

3/15 COMM REPORT-BILL CONCURRED AS AMENDED

3/19 2ND READING CONCURRED 96 0

3/21 3RD READING CONCURRED 96 0

RETURNED TO SENATE WITH AMENDMENTS

3/23 2ND READING AMENDMENTS CONCURRED 49 0

3/26 3RD READING AMENDMENTS CONCURRED 50 0

3/29 SIGNED BY PRESIDENT

3/30 SIGNED BY SPEAKER

3/30 TRANSMITTED TO GOVERNOR

4/03 SIGNED BY GOVERNOR

CHAPTER NUMBER 346 EFFECTIVE DATE: 4/03/85

SB 258 INTRODUCED BY TVEIT, E. SMITH, ET AL.
SURFACE DAMAGES IN OIL AND GAS DEVELOPMENT

1/25 INTRODUCED

1/26 REFERRED TO NATURAL RESOURCES

2/06 HEARING

2/23 COMMITTEE REPORT-BILL PASS AS AMENDED

2/25 2ND READING PASS 47 1

2/27 3RD READING PASS 49 1

SENATE FINAL STATUS

TRANSMITTED TO HOUSE
 3/06 REFERRED TO NATURAL RESOURCES
 3/20 HEARING
 3/26 COMM REPORT-BILL CONCURRED AS AMENDED
 3/30 2ND READING CONCURRED 96 0
 4/01 3RD READING CONCURRED 98 1

 RETURNED TO SENATE WITH AMENDMENTS
 4/03 2ND READING AMENDMENTS CONCURRED 50 0
 4/05 3RD READING AMENDMENTS CONCURRED 44 1
 4/11 SIGNED BY PRESIDENT
 4/11 SIGNED BY SPEAKER

 4/12 TRANSMITTED TO GOVERNOR
 4/16 SIGNED BY GOVERNOR
 CHAPTER NUMBER 497 EFFECTIVE DATE: 10/01/85

SB 259 INTRODUCED BY VAN VALKENBURG, DONALDSON
 ALLOW PRISON RANCH LOANS TO EXTEND BEYOND FISCAL
 YEAR
 BY REQUEST OF DEPARTMENT OF INSTITUTIONS

1/26 INTRODUCED
 1/28 REFERRED TO STATE ADMINISTRATION
 2/14 HEARING
 2/15 COMMITTEE REPORT-BILL DO PASS
 2/18 2ND READING PASS 50 0
 2/20 3RD READING PASS 47 2

 TRANSMITTED TO HOUSE
 2/27 REFERRED TO STATE ADMINISTRATION
 3/19 HEARING
 3/19 COMMITTEE REPORT-BILL CONCURRED
 3/23 2ND READING CONCURRED 88 1
 3/26 3RD READING CONCURRED 96 2

 RETURNED TO SENATE
 3/30 SIGNED BY PRESIDENT
 3/30 SIGNED BY SPEAKER

 4/01 TRANSMITTED TO GOVERNOR
 4/04 SIGNED BY GOVERNOR
 CHAPTER NUMBER 354 EFFECTIVE DATE: 7/01/85

SB 260 INTRODUCED BY DANIELS
 DEPUTY AND UNDERSHERIFF LONGEVITY - NOT MANDATORY -
 CAP ON TOTAL AMOUNT

1/26 INTRODUCED
 1/28 REFERRED TO LOCAL GOVERNMENT
 2/14 HEARING
 2/21 ADVERSE COMMITTEE REPORT 43 6
 2/21 BILL KILLED

SB 261 INTRODUCED BY LYNCH, STEPHENS, ET AL.
 ELIMINATING USE AND OWNERSHIP REQUIREMENTS FOR GOLF
 COURSE TAX REDUCTION

1/26 INTRODUCED
 1/28 REFERRED TO TAXATION

1 *Senate* BILL NO. *258*
2 INTRODUCED BY *Therese E. Smith* *Reginald Hecox*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW *Relay*
5 RELATING TO COMPENSATION PAYABLE FOR SURFACE DAMAGE BY OIL
6 AND GAS DEVELOPMENT; PROVIDING A PENALTY FOR FAILURE TO GIVE,
7 NOTICE OF PLANNED DRILLING OPERATIONS; PROVIDING TRIPLE
8 DAMAGES FOR FAILURE TO MAKE STIPULATED DAMAGE PAYMENTS;
9 AMENDING SECTIONS 82-10-502 AND 82-10-504, MCA."
10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
12 Section 1. Section 82-10-502, MCA, is amended to read:
13 "82-10-502. Definitions. As used in this part, the
14 following definitions apply:
15 (1) "Agricultural production" means the production of
16 any growing grass, crops, or trees attached to the surface
17 of the land or farm animals with commercial value.
18 (2) "Oil and gas operations" means the seismic or
19 other exploration for or drilling of an oil and gas well
20 that requires entry upon the surface estate and is begun
21 subsequent to June 1, 1981, and the production operations
22 directly related to the seismic or other exploration or
23 drilling.
24 (3) "Oil and gas developer or operator" means the
25 person who acquires the oil and gas lease for the purpose of

1 extracting oil and gas.
2 (4) "Oil and gas estate" means an estate in or
3 ownership of all or part of the oil and gas underlying a
4 specified tract of land.
5 (5) "Surface owner" means the person who holds record
6 title to or has a purchaser's interest in the surface of the
7 land."
8 Section 2. Section 82-10-504, MCA, is amended to read:
9 "82-10-504. Surface damage and disruption payments.
10 (1) The oil and gas developer or operator shall pay the
11 surface owner a sum of money or other compensation equal to
12 the amount of damages sustained by the surface owner for
13 loss of agricultural production and income, lost land value,
14 and lost value of improvements caused by drilling
15 operations.
16 (2) The amount of damages may be determined by any
17 formula mutually agreeable between the surface owner and the
18 oil and gas developer or operator. When determining damages,
19 consideration shall be given to the period of time during
20 which the loss occurs.
21 (3) The surface owner may elect to be-paid-damages-in
22 receive annual installments damage payments over a period of
23 time, except that the surface owner shall be compensated by
24 a single sum payment for harm caused by exploration only.
25 (4) The payments contemplated by this section may only

1 cover land directly affected by drilling operations and
2 production. Payments under this section are intended to
3 compensate the surface owner for damage and disruption; no
4 person may reserve or assign that compensation apart from
5 the surface estate except to a tenant of the surface
6 estate."

7 NEW SECTION. Section 3. Penalty -- triple damages.

8 (1) An oil and gas developer or operator who fails to
9 provide notice as required by 82-10-503 is guilty of a
10 misdemeanor and is punishable by a fine of not more than
11 \$500.

12 (2) An oil and gas developer or operator who fails to
13 make any annual damage payment as required by any damage
14 agreement negotiated with a surface owner is liable for
15 payment to the surface owner of three times the amount of
16 such payment.

-End-

MINUTES OF THE MEETING
SENATE NATURAL RESOURCES COMMITTEE
MONTANA STATE SENATE
February 6, 1985

The fourth meeting of the Senate Natural Resources Committee was called to order at 1:02 p.m., February 6, 1985, by Chairman Dorothy Eck in Room 405, State Capitol Building.

ROLL CALL: All members of the committee were present with the exception of Senator Stimatz and Senator Manning, who was excused.

CONSIDERATION OF SB258: Senator Tveit, sponsor of SB258, received permission from Chairman Eck to be removed from the committee for purposes of testifying. Senator Tveit submitted written testimony (Exhibit 1) and proposed amendments (Exhibit 2). Senator Tveit explained that SB258 provides for advance notice to be given to surface owners before seismic or oil and gas operations begin on their land. Senator Tveit stated that although problems with seismograph crews coming on the land is not a major problem for surface owners, it is a problem nonetheless. He further explained that Section 3 of SB258 provides for triple penalties to ensure that surface owners are compensated for damages in a timely fashion.

PROPONENTS: Mr. William Petersen, Vice President of the Northeast Montana Land and Mineral Owners' Association, submitted written testimony in favor of SB258 (Exhibit 4).

Senator Ed Smith told the committee that he sponsored the bill which is responsible for the current language in the law. Senator Smith supports SB258 and, in particular, the proposed penalties. Senator Smith feels if there is no penalty involved, the law is ineffective. Senator Smith also testified that sometimes the only way the surface owner is aware of oil and gas exploration is when he sees the equipment being hauled onto the land. Senator Smith contends the possibility of oil and gas companies having to pay triple penalties will encourage the companies to negotiate a settlement for damages with the surface owners. Senator Smith feels that none of the language contained in SB258 should be deemed unreasonable.

Mr. Russ Brown, representing the Northern Plains Resource Council, feels that SB258 is a valid attempt to solve problems between oil and gas companies and surface owners.

There being no further proponents, the hearing was opened to opponents.

OPPONENTS: Mr. Pat Melby, representing the Montana Oil and Gas Association, opposes the bill; although, the amendments make the bill more tolerable. Mr. Melby does not agree with the criminal penalties provided, and would rather see the contract between the surface owner, mineral owner and land developer be a contract of a civil nature. Mr. Melby feels that failure to give notice should be a civil crime and carry a civil penalty.

Mr. Darwin VanDeGraaff, Executive Director of the Montana Petroleum Association, testified that the issue of damages is handled in the lease which is entered into between the parties prior to exploration. Mr. VanDeGraaff did not understand why seismic operations were mentioned in the bill, when these operations do not pertain to oil and gas exploration. Mr. VanDeGraaff also had problems with Section 2(2) of SB258 and the mention of a "mutually agreeable formula." Mr. VanDeGraaff feels the problems arise when the formula is not mutually agreeable and suggested third-party arbitration. Mr. VanDeGraaff pointed out that when a surface owner denies a mineral owner access to the land, he is denying the mineral owner of his rights.

Mr. Jim Wise, representing CENEX, submitted written testimony (Exhibit 5) in opposition to SB258.

Senator Thomas Keating, Senate District 44, testified about the existence of a contractual agreement when the owners sign an oil and gas lease. Senator Keating contends that surface owners are aware of mineral reservations at the time the land is purchased and should be prepared for the day when these minerals are developed. Senator Keating stated that although the surface owner has rights, these rights are not superior to those of the mineral owner. Senator Keating also feels that seismic operations have no proper place in the bill. Mr. Keating also explained that the issue of damages is decided before the fact with explicit instructions as to how and by whom damages are to be paid. Senator Keating feels the criminal penalty is not proper, and past history shows this bill is not necessary because of the lack of court action.

There being no further opponents to the bill, the hearing was opened to questions from the committee.

Senator Gage informed the committee that part of the procedure for obtaining a permit to drill requires evidence that the surface owner has been notified of the oil and gas company's intentions.

Upon question from Senator Eck, Senator Keating stated that often the surveyor is the first person to go on the land and make contact with the surface owner.

Senator Harding questioned Senator Tveit as to whether there are oil and gas contracts where the parties agree the land will not be damaged. Senator Tveit replied that anything can be written into the lease, but the lease is between the oil and gas company and the mineral owners and does not include the surface owner. Senator Tveit contends that since the lease deals mostly with the royalties between the oil and gas company and the mineral owner, SB258 is necessary to protect the rights of the surface owner.

Senator Mohar questioned Senator Tveit about what happens in the situation where the parties cannot agree upon settlement or a mutual formula as mentioned in Section 2(2). Senator Eck pointed out that Senator Mazurek has a bill providing for binding arbitration, and, if his bill passes, this situation would be taken care of.

Senator Eck questioned Senator Tveit as to whether trespass laws would apply in situations where the surveyors, seismograph crews or persons from oil and gas companies access a person's land without giving notice. Senator Tveit stated that the trespass laws do apply; however, the penalty for trespass is a misdemeanor, and it is difficult to prosecute "tire tracks."

Upon question from Senator Eck, both Senators Tveit and Keating agreed that the Oil and Gas Commission was monitoring the quality of water on drilling sites.

Senator Tveit closed the hearing by stating that the Oil and Gas Commission told him the current law is not worth the paper it is written on. Senator Tveit feels that although the penalty is not real substantial, oil and gas companies will respect it.

There being no further questions from the committee, the hearing on SB258 was closed.

ROLL CALL

Natural Resources

COMMITTEE

48th LEGISLATIVE SESSION -- 1985

Date 020685

SENATE
SEAT
#

NAME	PRESENT	ABSENT	EXCUSED
<u>ECK, Dorothy (Chairman</u>	✓		
<u>HALLIGAN, Mike (Vice Chairman)</u>	✓		
<u>MANNING, Dave</u>			✓
<u>MOHAR, John</u>	✓		
<u>DANIELS, M. K.</u>	✓		
<u>FULLER, David</u>	✓		
<u>STIMATZ, Larry</u>			
<u>TVEIT, Larry</u>	✓		
<u>GAGE, Delwyn</u>			
<u>ANDERSON, John</u>	✓		
<u>SHAW, James</u>	✓		
<u>HARDING, Ethel</u>	✓		

Each day attach to minutes.

TESTIMONY - SB 258

SENATOR LARRY TVEIT

MADAM CHAIRMAN, MEMBERS OF THE COMMITTEE,

I am Senator Larry Tveit, District 11 representing Roosevelt and Richland County. I also serve as a director of the Northeast Montana Land and Mineral Owners Association serving several hundred mineral owners, surface owners, and farmers.

This bill which I am sponsoring today is SB 258, which amends current law stemming from Senate Bill 16 which I helped put through in the 1981 session.

SB 258 amends several parts of the law by providing a penalty for failure to give notice before entering surface owners' property, by amending seismic operations to "Oil and gas operations and adding a new section (3) which addresses the penalty and double damages."

The purpose of the bill is the failure of both seismic companies and oil companies to respect the surface owners' property by properly notifying the owner or tenant when they come on or cross over his land.

The "double" damage amendment stems from oil and seismic companies who fail to live up to their agreements with surface owners.

These amendments to the existing law are fair and address the problems that exist now and I would appreciate your consideration in passage of the bill. Thank you.

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 1

DATE 020685

Senate Bill 258 Amendments

1. Title, line 7.
Strike: "TRIPLE"
Insert: "DOUBLE"
2. Page 3, line 7.
Strike: "triple"
Insert: "double"
3. Page 3.
Following: line 11
Strike: subsection (2) in its entirety
Insert: "(2) An oil and gas developer or operator who is in default with respect to the payment of any annual or single-sum damage payment as required by any damage agreement negotiated with a surface owner, and who remains in default with respect to such payment 60 days after notice of default is given by certified mail by the surface owner, is liable to the surface owner for double the amount of such payment."

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 2

DATE 020685

BILL NO. SB258

Mr. Chairman - Members of the Committee:

My name is William Petersen. I am Vice President of the Northeast Montana Land and Mineral Owners Association. I'm a farmer, rancher from Culbertson.

This is a situation as reported to me by John Dethman of Bainville.

An oil company moved earth moving equipment in on this property, April 1977, with no prior notice and started building a pad for one oil well. Mr. Dethman contacted the Gas and Oil Commission and was informed that no permit to drill had been issued. The permit was issued later that day. No representative of the oil company had contacted Mr. Dethman to discuss surface damages. Surface damages still haven't been settled on this well and the pit was left open for two years.

In December of 1979 the same company moved in, again with no advance notice, and started building a pad approximately 500 ft. from the first well. The Vice President of the company contacted Mr. Dethman and told him that they would get together on damages after the Christmas holidays. After Christmas Mr. Dethman was told that the Vice President had quit the company and a new man would negotiate with him. To date, no damage settlement on either of the two wells has been reached.

To further complicate things, these wells have changed ownership three times and no royalty payments have been made since June of 1983 although loads of oil have been going out of the site. Mr. Dethman has contacted the Gas and Oil Commission for help, but they say they are not

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 3

DATE 020685

an enforcement agency.

Mr. Dethman has hired an attorney, but after eight months, they have given up, so he will have to look elsewhere.

With passage of SB 258 the surface owner will have legal help through the state legal system.

In 1984 another oil company moved equipment in to prepare another site. Mr. Dethman contacted the company and asked them if they know that state law required them to notify him before starting work. They immediately notified him in writing. Their local representative said they weren't too concerned because there is no penalty for not complying with that law. SB 258 will help correct this. I urge passage of SB 258. Thank you.

TESTIMONY OF MARLYN VANNATH - February 6, 1985

Mr. Chairman and members of the committee we support S.B. 258.

VANNATH

I am Marlyn Vannath a member and Director of the Northeast Montana Land and Mineral Owners Association. We have 3 1/2 million acres in our Association in Montana.

We support S.B. 258. This bill would do away with a lot of the problems caused by oil and gas development.

We have a monthly meeting and rotate them between Scobey, Plentywood, Culbertson and Sidney, Montana. The thing we hear the most from our members is the problem of getting just and fair payments for land taken out of production due to oil and gas exploration, site damages and road damages.

I might also make the comment that our Oil and Gas Commission have no authority to enforce these rules or laws. You can have all the rules and regulations, but if not enforced you have nothing.

I don't know how many of you people have dealt with the oil companies, but if you don't have laws to abide by, you are at their mercy. The Gas and Oil Commission should have the authority to enforce laws.

I am not against the oil companies, don't get me wrong, we need the development locally and for Montana. I would like to STRESS very much, we need LAWS and enforcement, this is a MUST.

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 4

DATE 020685

BILL NO. SB 258

FARMERS UNION CENTRAL EXCHANGE, INC.



" Where the customer is the company

February 6, 1985

1601 Lewis Ave • Post Office Box 21479
Billings, Mont. 59104 • (406) 245-4747

Senate Natural Resources Committee

RE: Senate Bill 258

Ladies and Gentlemen:

As a representative of CENEX I appreciate the opportunity to be here today to object to Senate Bill 258.

CENEX has been in the exploration business for nearly 40 years, establishing our first production in 1946. Today we have ownership in approximately 700 producing wells with daily production in excess of 6000 barrels. Our reserves in the ground are nearly 13 million barrels and we have more than 1 million acres of lands under lease. Most of our recent exploration activity has been in Central Montana and in the Williston Basin of Montana and North Dakota.

Nearly every day of the year we are drilling in the ground somewhere in the northern Rocky Mountain area. As a result, we are continually negotiating surface damage settlements as a part of our normal drilling operations. We have always believed that there is a contractual obligation to deal with the surface owner prior to drilling. We make contact with the landowner and are personally involved in settling damages each time we drill a well. In nearly forty years of operations we have never been involved in a court case to settle a damage claim in Montana.

Senate Bill 16 was passed into law in 1981 making it mandatory to notify the surface owner and negotiate a damage settlement. Should this be violated, the court will provide remedy. It is not necessary to amend the existing law to provide for a misdemeanor and a \$500.00 fine.

Upon settlement of damages the surface owner is more likely to be paid in excess of the actual value of the land and, many times, no annual payments are negotiated. On occasion, the surface owner negotiates to have the operator build a road, a dam, install a cattleguard or provide a fence in lieu of a damage settlement in dollars. Should Senate Bill 258 be passed, the surface owner would lose his power to barter. I do not need to remind you that compensation for damages should not be treated as income from oil and gas exploration. Royalty is the income from exploration and production. The settlement negotiated with the surface owner is payment for damages incurred.

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 5

DATE 02/06/85

52058

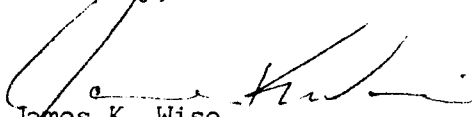
Because both parties, surface owner and operator, are currently protected under Senate Bill 16, there is no need for an amendment to said Bill by way of Senate Bill 258.

Should we continue to complicate existing Bills through amendments and modifications, the only profession to benefit will be the legal profession. The oil and gas operator and the land owner will be left on the outside looking in.

I urge you to reconsider Senate Bill 258 and delete same from the agenda.

Thank you.

CENEX Exploration & Production
Sincerely,



James K. Wise
Petroleum Landman

MINUTES OF THE MEETING
SENATE NATURAL RESOURCES COMMITTEE
MONTANA STATE SENATE
February 13, 1985

The seventh meeting of the Senate Natural Resources Committee was called to order at 12:35 p.m., February 13, 1985, by Chairman Dorothy Eck in Room 405, State Capitol Building.

ROLL CALL: All members of the Senate Natural Resources Committee were present.

CONSIDERATION OF HB96: Representative Holliday, sponsor of HB96, opened the hearing by stating HB96 is a self-explanatory piece of legislation that establishes the time period for when an operator must pay interest on delinquent royalty payments. Representative Holliday submitted testimony supporting the extension of the time limit from 60 days to 120 days (Exhibit 1).

PROPOSERS: Senator Stimatz removed himself from the committee for purposes of testifying. Senator Stimatz explained that HB96 shortens from 180 days to 120 days the time an oil and gas operator has to pay royalties to the royalty owner before the oil and gas operator must start paying interest. Senator Stimatz stated the oil and gas companies do not oppose this bill.

There being no further proponents and no opponents, the hearing was opened to questions from the committee.

Senator Shaw questioned the use of 31-1-107 on page 2, line 3. Representative Holliday explained this was a reference to the Montana Code Annotated, (MCA), and the maximum rate of interest allowed is the prime interest rate established in New York City.

Senator Gage stated he is concerned about the 120 limit because, on occasion, 120 days will not be sufficient. An example of this is when division orders are not received within the 120-day limit. Representative Holliday stated this case would come under the exemptions provided on page 2, lines 16-21, and felt this would not be a problem.

Chairman Eck questioned Representative Holliday as to whether the title of the bill accurately reflects the bill's purpose. Senator Holliday pointed out that it does, and noted the "180 days" is easy to read as "100-days." Mr. Bob Thompson stated that, in his opinion, the title of the bill generally reflects the bill's purpose.

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There being no further questions from the committee, the hearing on HB96 was closed.

CONSIDERATION OF HB258: Due to the absence of Representative Cohen, sponsor of HB258, Senator Harding opened the hearing. Senator Harding explained SB258 adds an ex officio member to the Flathead Basin Commission. This will increase the number of members from 15 to 16. HB258 provides that the ex officio member must be the Director of the Department of Health and Environmental Sciences or his designee.

PROPOSERS: Mr. George Ochenski, representing the Environmental Information Center, supports HB258. Mr. Ochenski feels the passage of this bill will help coordinate agency activities.

There being no further proponents and no opponents, the hearing was opened to questions from the committee.

Senator Mohar asked how often the Flathead Basin Commission meets. Mr. Ochenski replied the Commission is just getting started and has not had an opportunity to determine a set schedule of meetings. Senator Gage stated it was his understanding the Commission met twice last year.

Upon question from Senator Tveit, Mr. Ochenski stated the Director of Health and Environmental Sciences is desired for membership because the Department would then know the Commission's concerns as they relate to health issues in the Flathead Basin.

Chairman Eck stated one of the major concerns of the Commission is water quality. Chairman Eck believes the Commission feels the Department is not as sensitive to the issue of water quality as it should be.

Senator Gage asked about the status of an ex officio member. Mr. Ochenski stated this enables the Director to send someone in his place if he could not attend the meeting. Senator Shaw did not understand why ex officio was used, since an ex officio officer is an officer who cannot vote. Chairman Eck explained that when a member of the administration becomes involved with a group of local people, he usually serves as an ex officio member. Senator Gage pointed out the same is not true for the staff person on the Commission from the Governor's office. Chairman Eck feels both of these should be ex officio members.

Senator Fuller stated the use of capital letters to replace lowercase letters for the subsection numbers throughout was inappropriate.

Representative Cohen, sponsor of the bill, was allowed to present HB258. Representative Cohen stated the bill was introduced because of the confusion that arose when messages were sent between the Commission and the Department of Health and Environmental Sciences. Representative Cohen feels it is important the Department be represented on the Commission, since it has been actively involved in the Commission's activities.

Senator Mohar asked Representative Cohen if he was aware of what the appropriations committee did with the Flathead Valley Project. Representative Cohen replied the budget had received a 10 percent cut.

There being no further questions from the committee, the hearing on SB258 was closed.

CONSIDERATION OF HB178: Senator Hager, co-sponsor of HB178, presented the bill to the committee. Senator Hager explained HB178 will give the State authority to set up hazardous waste collection facilities and to use necessary funding for those facilities from the Resource Indemnity Trust Fund. Senator Hager feels it is easier to deal with the State on these matters than with the federal government.

PROPOSERS: Mr. George Ochenski, representing the Environmental Information Center, testified that recent changes in federal regulations regarding the dumping of hazardous waste will affect Montana. The federal legislation has recently reclassified hazardous waste generators from 1,000 kilos of waste per month to 100 kilos of waste per month. This means waste which could have previously been dumped in a landfill will need to be disposed of at a hazardous waste dumping site. Mr. Ochenski stated the federal regulations will go into effect in 1986, so Montana will have to make provisions for hazardous waste collection sites before that time. SB258 is one bill in a package of bills to be introduced which will give Montana the facilities to handle this type of waste correctly. Mr. Ochenski stated the result of not having hazardous waste collection available will be "midnight dumping."

There being no further proponents and no opponents, the hearing was opened to questions from the committee.

Senator Gage questioned about how the State would build and generate the facility. For example, would the State create

ROLL CALL

Natural Resources

COMMITTEE

48th LEGISLATIVE SESSION -- 1985

Date 021385

STATE
SEAT
#

NAME	PRESENT	ABSENT	EXCUSED
<u>ECK, Dorothy (Chairman</u>	✓		
<u>HALLIGAN, Mike (Vice Chairman)</u>	✓		
<u>WHEELING, Cecil</u>	✓		
<u>MOHAR, John</u>	✓		
<u>DANIELS, M. K.</u>	✓		
<u>FULLER, David</u>	✓		
<u>CHRISTIAENS, Chris</u>	✓		
<u>TVEIT, Larry</u>	✓		
<u>GAGE, Delwyn</u>	✓		
<u>ANDERSON, John</u>	✓		
<u>SHAW, James</u>	✓		
<u>HARDING, Ethel</u>	✓		

Each day attach to minutes.

021385

VISITORS' REGISTER

(Please leave prepared statement with Secretary)

MINUTES OF THE MEETING
SENATE NATURAL RESOURCES COMMITTEE
MONTANA STATE SENATE
February 18, 1985

The tenth meeting of the Senate Natural Resources Committee was called to order at 12:30 p.m., February 18, 1985, by Chairman Dorothy Eck in Room 405, State Capitol Building.

ROLL CALL: All members of the Senate Natural Resources Committee were present.

CONSIDERATION OF SB326: Senator Himsl, sponsor of SB326, submitted written testimony (Exhibit 1) and explained the bill is being introduced to prevent a party from usurping someone else's water rights. Senator Himsl explained the bill is the result of a situation where the members of a homeowners' association were deprived of their water rights by one of the residents.

PROPOSERS: Mr. Dennis Hemmer, representing the Department of State Lands, submitted proposed amendments to SB326 (Exhibit 2). Mr. Hemmer stated the amendments are needed, because the Department does not always own the development rights. Mr. Hemmer explained his amendments will allow for use of water with the consent of the proper owner.

There being no further proponents and no opponents, the hearing was opened to questions from the committee.

Upon question from Senator Shaw, Senator Himsl stated he had no problems with the amendments proposed by the Department of State Lands.

ACTION ON SB326: Senator Mohar moved the amendments proposed by the Department of State Lands BE ADOPTED. The motion carried. Senator Christiaens moved SB326 DO PASS AS AMENDED. The motion carried.

CONSIDERATION OF SB410: Senator Keating, sponsor of SB410, stated this bill deals with the Montana Environmental Policy Act, which is extremely general in nature. Senator Keating feels permits for oil and gas exploration have been threatened by MEPA. In order to alleviate this problem, Senator Keating is requesting that issuance of a permit not be considered a major act of state government and not fall within the scope of MEPA.

PROPOSERS: Mr. Donald Garrity, attorney for the Board of Oil and Gas Conservation, submitted written testimony (Exhibit 3) in favor of SB410.

Mr. Jim Moore, representing SOHIO Petroleum Company, which intends to drill near Mr. Ramsey's home, stated SOHIO Petroleum Company is required to obtain a conditional use permit before commencing any drilling operations. Mr. Moore stated SOHIO Petroleum has tried to satisfy the concerns of the residents of Bridger Canyon. Mr. Moore also informed the committee that even though the drilling site is near residences, the area is considered to be rural. SOHIO Petroleum has withdrawn its drilling permit and asked the Board of Oil and Gas Conservation to determine whether an EIS is necessary.

There being no further opponents, the hearing was opened to questions from the committee.

Senator Mohar questioned whether SB410 applies only to private land or also to state and federal land. Mr. Dennis Hemmer replied the State issues leases rather than permits, and federal and Indian lands are under federal regulations.

Senator Weeding questioned Mr. Garrity about how many instances an EIS has been requested. Mr. Garrity stated, to the best of his knowledge, the Bridger Canyon instance is only the second one.

Senator Fuller questioned whether the situation would be different if the locality was different. Senator Keating replied that in some states, oil rigs are being operated in the middle of residential areas. Senator Keating reminded the committee that Bridger Canyon is a rural area and not a residential area.

Senator Keating closed the hearing by stating that the Oil and Gas Commission has been issuing permits since 1971, which is the same time that MEPA was enacted. Senator Keating stated that since this time, there have never been any real controversies. Senator Keating asked the committee to please clarify the actions of MEPA.

There being no further questions from the committee, the hearing on SB410 was closed.

FURTHER CONSIDERATION OF SB258: Mr. Bob Thompson distributed copies of proposed amendments to SB258 (Exhibit 10). Senator Gage had problems with No. 12 of the proposed amendments. Senator Gage wanted to know who would be liable if the permit was issued without the proper persons being notified. Senator Gage wanted to be assured the Oil and Gas Commission would not be held liable. Mr. Thompson reminded the committee the correct title is the "Board of Oil and Gas Conservation," rather than the "Oil and Gas Commission."

Senator Halligan questioned what the permitting procedure is now and how it is determined that notice is properly given. Senator Gage explained at the present time, oil and gas companies are not required to give notice to surface owners. Senator Tveit then explained this was the purpose of SB258. Senator Tveit feels SB258 will make the oil companies and surface owners work together.

Senator Halligan moved the committee pass consideration on SB258 until a later date. The motion carried.

CONSIDERATION OF SB369: Senator Neuman, sponsor of SB369, stated Montana's current law regarding dam safety is archaic. Montana is currently under pressure from the federal government to implement a dam safety act. Senator Neuman feels Montana should be attentive to unsafe dams before a tragedy occurs. SB369 provides new laws relating to dams in the areas of approving permits, structure and enforcement. The bill also provides for inspections and emergency repairs, permit cancellation, and penalties.

PROPONENTS: Mr. Kim Kelly, representing the Montana Water Development Association, stated the first bill regarding dam safety was introduced in 1973. The Montana Water Development Association supported the 1973 bill and every bill introduced since. The irrigation districts also support the bill. Mr. Kelly informed the committee that dam safety is a serious consideration in Montana, because inspections of dams have indicated Montana currently has 36 dams, located in 18 counties, which are unsafe. SB369 will allow five years from the time of inspection, for these dams to be repaired. Mr. Kelly submitted a letter he received from Glen H. Loomis, U. S. Department of Agriculture (Exhibit 11) and written testimony supporting SB369 from Women in Farm Economics (Exhibit 12).

Mr. Keith Williams, representing the National Water Resources Association, stated his organization is very concerned with dam safety in Montana. Many dams in Montana are not considered to be high-hazard dams until residents begin to occupy the area below the dam. At that time, the dam's status does change to high-hazard. Mr. Williams feels Montana must develop a program to meet dam safety requirements.

Mr. Roger Foster, a member of the Montana Water Development Association, stated Montana's current law regarding dam safety can only react to hazardous situations rather than work to prevent these situations from starting. Mr. Foster stated

ROLL CALL

Natural Resources

COMMITTEE

48th LEGISLATIVE SESSION -- 1985

Date 021885

SENATE
SEAT

#

NAME	PRESENT	ABSENT	EXCUSED
<u>ECK, Dorothy (Chairman</u>	✓		
<u>HALLIGAN, Mike (Vice Chairman)</u>	✓		
<u>WHEEDING, Cecil</u>	✓		
<u>MOHAR, John</u>	✓		
<u>DANIELS, M. K.</u>	✓		
<u>FULLER, David</u>	✓		
<u>CHRISTIAENS, Chris</u>	✓		
<u>TVEIT, Larry</u>	✓		
<u>GAGE, Delwyn</u>	✓		
<u>ANDERSON, John</u>	✓		
<u>SHAW, James</u>	✓		
<u>HARDING, Ethel</u>	✓		

Each day attach to minutes.

Proposed Amendments to SB 258:

1. TITLE, lines 6-7

Strike: "PROVIDING A PENALTY FOR FAILURE TO GIVE NOTICE OF PLANNED DRILLING OPERATIONS"

2. TITLE, line 7

Strike: "TRIPLE"

Insert: "DOUBLE"

3. TITLE, line 8

Following: "PAYMENTS;"

Insert: "REQUIRING THE BOARD OF OIL AND GAS CONSERVATION TO WITHHOLD THE DRILLING PERMIT UNTIL EVIDENCE IS PRESENTED THAT THE SURFACE OWNER HAS RECEIVED THE NOTICE OF INTENT TO DRILL;"

4. Page 1, lines 18-19

Strike: "seismic or other"

5. Page 1, line 22

Strike: "seismic or other"

6. Page 3, line 7

Strike: "triple"

Insert: "double"

7. Page 3, lines 8 through 11.

Strike: "(1) An oil and gas developer or operator who fails to provide notice as required by 82-10-503 is guilty of a misdemeanor and is punishable by a fine of not more than \$500."

8. Page 3, line 12

Strike: "(2)"

9. Page 3, line 13

Strike: "make"

Insert: "timely pay any installment under"

Following: "annual"

Insert: "or single-sum"

Following: "damage"

Strike: "payment as required by any damage"

10. Page 3, line 15

Following: "owner of"

Insert: "twice"

11. Page 3, line 16

Strike: "such payment"

Insert: "the unpaid installment if the installment payment is not paid within 60 days of receipt of notice of failure to pay from the surface owner."

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 10

DATE 02/18/85

BILL NO. SB258

12. Page 3, following line 16

Insert: "NEW SECTION. Section 4. Withholding of drilling permit. The oil and gas commission shall withhold the drilling permit until it has received evidence that a notice of intention to drill has been received by the surface owner."

13. Page 3, following line 16

Insert: "NEW SECTION. Section 5. Codification instruction. Sections 3 and 4 are intended to be codified as an integral part of Title 82, chapter 10, part 5, and the provisions of Title 82, chapter 10, part 5 apply to sections 3 and 4."

14. Page 3, following line 16

Insert: "NEW SECTION. Section 6. Extension of authority. Any existing authority of the board of oil and gas conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act."

MINUTES OF THE MEETING
SENATE NATURAL RESOURCES COMMITTEE
MONTANA STATE SENATE
February 20, 1985

The eleventh meeting of the Senate Natural Resources Committee was called to order at 12:30 p.m., February 20, 1985, by Chairman Dorothy Eck in Room 405, State Capitol, Helena, Montana.

ROLL CALL: All members were present.

ACTION ON SB 369: The amendments that were presented to the committee at the last meeting were reviewed by Bob Thompson, staff researcher. He said this bill and the proposed amendments were proposed by the Department of State Lands to exempt those dams that were subject to a permit issued under the Hardrock Reclamation Act. The exemption was agreed to by Senator Neuman and supported by Mr. Doney after the meeting on Monday.

Senator Shaw moved the amendments.

Discussion was called for. Senator Mohar stated he hoped by not including tailings ponds in this bill, the Department would do everything that they can do in the permitting process to insure these tailings pond enclosures are adequately inspected.

Dennis Hemmer, Department of State Lands, said the reason for the amendment is because one of the problems they have run into is the tailings ponds are somewhat different than the dams you are dealing with. You do not want a tailings dam to spill. You are looking at a different type of dam and the stress factors on it are different. The situation you get into is that the dam is designed for what it is intended to do. Once it is out from under there, and it is still impounding water, which most of them that they are getting into now won't be, then it would still fall under the jurisdiction of this.

Senator Gage asked if the tailings dams were high hazard dams.

Dennis Hemmer said he is not aware of any that are currently under permit that fall under that criteria, but there are some that are grandfathered from the Hardrock Act that are.

Senator Weeding asked if they were not told the dams which were being exempted are being covered under the Hardrock legislation.

Dennis Hemmer said the dams which were not being covered are presently covered by the Water Quality Act, and there is also a public safety provision presently in the Hardrock Act. If HB 698 passes it will reinforce this.

Senator Mohar asked if, in relation to this, on the dams that the Department of State Lands authorizes and the Department of Health has authority over, do they employ engineers and have design and safety checks.

Dennis Hemmer said he believes they adequately cover them.

Senator Christiaens asked the researcher, Bob Thompson, to assure this bill meets the requirements for dam safety standards which must be in place by 1988.

Bob Thompson said he does not know the answer to that.

Senator Eck said she is sure that is what Senator Neuman was working for, and it does meet that criteria.

Question was called on the amendments to SB 369. Motion passed unanimously that the amendments be accepted.

Senator Fuller moved that SB 369 DO PASS AS AMENDED. Motion passed with Senator Shaw voting "no."

ACTION ON SB 258: Exhibit 2 was presented and discussed. Bob Thompson walked the committee through the amendments.

He said one change which has been made is Section 12 of the amendment page. Senator Tveit recommended they again insure the oil and gas developer or operator make an effort to notify the surface owner; thus, in Title 82, Chapter 11, Section 122, the sentence is added (see amendment 12, underlined material). This amendment was agreed upon between Senator Tveit and Mr. Mile of the Oil and Gas Conservation Division.

Senator Tveit reviewed how the amendments were prior to the change, and said there was a problem of the owner being notified.

Senator Tveit moved the amendments.

Senator Halligan questioned the fact when the operator of the land was different than the surface owner.

Senator Tveit said it only addresses the surface owner.

Senator Gage responded to Senator Halligan's question and said there is no way of addressing that, because the leases may or may not be on file, so the contractor has no way of knowing who the person farming the property would be, but they could find out the owner of the land.

Question was called on the amendments. Motion passed.

Senator Tveit MOVED THE BILL AS AMENDED.

Discussion was continued. Senator Mohar said there were some questions raised during the committee hearing on page 2, subsection 2, regarding agreements between the oil company and the surface owner. He asked if there should not be some kind of third-party arbitration.

Senator Tveit said he would not like mandating rules.

Senator Gage responded there are usually agreements made between the two parties. There are exceptions, but he also said he would hate to see anything put in just to cover a few exceptions.

Senator Shaw presented a scenario, and stated he does not feel this bill is necessary.

Question was called on Senator Tveit's motion.
SENATE BILL 258 PASSED AS AMENDED. Senator Shaw voted "no."

ACTION ON SB 277: The amendments (Exhibit 3) were walked through by Bob Thompson. He said amendments 1, 4, 5 and 21 were recommended by the Department of Natural Resources. Amendments 2, 9, 11, 12 and 16 deal with the liability question. Amendment 2 deals with the policy section of the act. Amendments 9, 11, and 12 deal with liability, #10 is omitted and is proposed to be taken out of the bill as currently written and instead amendment 16 will specify what projects are eligible for funding under the Legacy Program. He remarked that Mr. Paul Smith called for these amendments representing himself, although he is a member of the Northern Plains Resource Council. Amendment 6 deals with Paul Smith's concern about the language in the bill which reads the Governor shall submit his proposals or the proposals having his approval, and his concern was the Governor could only submit one or two proposals and the legislature would be bound. It was not the intent of the Governor's office, and Gene Huntington proposed what is inserted in the present language which reads the Governor should accept all proposals with his recommended priority. In the same section there is a requirement that these priorities be submitted by the 20th day of the session. Amendment 8 deals with Mr. Smith's concern about emergency projects. Amendments 17 and 18 deal with the concern about the use of the word "efficient." It was suggested to replace "efficient" with the words "minimize misuse." Amendment 19 deals with a concern addressed by Howard Pede of the Montana Water Resources, and the concern some projects in the state are dependent on the ability of the program to match funds from the federal government or other sources. The suggestion is that they attach into the evaluation criteria that one of the considerations be the ability of the project proposals to generate other funds beyond those offered by the State. Amendment 20 answers Judy Carlson's concern regarding the criteria which were discussed with Gene Huntington before inserting the present language.

ROLL CALL

Natural Resources

COMMITTEE

48th LEGISLATIVE SESSION -- 1985

Date 2-20-85

SENATE
SEAT
#

NAME	PRESENT	ABSENT	EXCUSED
ECK, Dorothy (Chairman	X		
HALLIGAN, Mike (Vice Chairman)	X		
^D WHEELING, Cecil	X		
MOHAR, John	X		
DANIELS, M. K.	X		
FULLER, David	X		
CHRISTIAENS, Chris	X		
TVEIT, Larry	X		
GAGE, Delwyn	X		
ANDERSON, John	X		
SHAW, James	X		
HARDING, Ethel	X		

Each day attach to minutes.

Proposed Amendments to SB 258:

1. TITLE, lines 6-7

Strike: "PROVIDING A PENALTY FOR FAILURE TO GIVE NOTICE OF PLANNED
DRILLING OPERATIONS"

2. TITLE, line 7

Strike: "TRIPLE"

Insert: "DOUBLE"

3. TITLE, line 8

Following: "PAYMENTS;"

Insert: "REQUIRING THE

4. Page 1, lines 18-19

Strike: "seismic or other"

4. TITLE, line 8

Following: "payments;"

Insert: "REQUIRING AN OIL AND GAS DEVELOPER OR OPERATOR TO NOTIFY THE
SURFACE OWNER BEFORE COMMENCING DRILLING OPERATIONS OF WHEN HE
SPECIFICALLY INTENDS TO DRILL"

5. TITLE, line 9

Following: "82-10-502"

Strike: "AND"

Following: "82-10-504"

Insert: "AND 82-11-122"

5. Page 1, line 22

Strike: "seismic or other"

6. Page 3, line 7

Strike: "triple"

Insert: "double"

7. Page 3, lines 8 through 11.

Strike: "(1) An oil and gas developer or operator who fails to
provide notice as required by 82-10-503 is guilty of a
misdemeanor and is punishable by a fine of not more than \$500."

8. Page 3, line 12

Strike: "(2)"

9. Page 3, line 13

Strike: "make"

Insert: "timely pay an installment under"

Following: "annual"

Insert: "or single-sum"

Following: "damage"

Strike: "payment as required by any damage"

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 2

DATE 022085

BILL NO. SB258

10. Page 3, line 15
Following: "owner of"
Strike: "three times"
Insert: "twice"

11. Page 3, line 16
Strike: "such payment"
Insert: "the unpaid installment if the installment payment is not paid within 60 days of receipt of notice of failure to pay from the surface owner."

12. Page 3, following line 16
Insert: "Section 4. Section 82-11-122, MCA, is amended to read:
"82-11-122. Notice of intent to drill or conduct seismic operations -- notice to surface owner. It is unlawful to commence the drilling of a well for oil or gas without first filing with the board written notice of intention to drill and obtaining a drilling permit as provided in 82-11-134. After the permit is issued, an oil and gas developer or operator as defined under 82-10-502 shall notify the surface owner of his specific intentions before commencing drilling. It is unlawful to conduct seismic explorations with explosives without first giving the board a copy of the notice of intention to explore filed with the county under 82-1-103.""

13. Page 3, following line 16
Insert: "NEW SECTION. Section 5. Codification instruction. Section 3 is intended to be codified as an integral part of Title 82, chapter 10, part 5, and the provisions of Title 82, chapter 10, part 5 apply to sections 3."

14. Page 3, following line 16
Insert: "NEW SECTION. Section 6. Extension of authority. Any existing authority of the board of oil and gas conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act."

STANDING COMMITTEE REPORT

FEBRUARY 23

19 85

MR. PRESIDENT

We, your committee on **NATURAL RESOURCES**

having had under consideration **SENATE BILL** No. **258**

FIRST reading copy (**WHITE**)
color

SURFACE DAMAGES IN OIL AND GAS DEVELOPMENT

Respectfully report as follows: That **SENATE BILL** No. **258**

be amended as follows:

1. Title, lines 6 through 7.

Strike: "PROVIDING A PENALTY FOR FAILURE TO GIVE NOTICE OF
PLANNED DRILLING OPERATIONS;"

2. Title, line 7.

Strike: "TRIPLE"

Insert: "DOUBLE"

3. Title, line 8.

Following: "PAYMENTS;"

Insert: "REQUIRING AN OIL AND GAS DEVELOPER OR OPERATOR
TO NOTIFY THE SURFACE OWNER OF HIS SPECIFIC INTENTIONS BEFORE
COMMENCING DRILLING OPERATIONS;"

4. Title, line 9.

Strike: "82-10-502 AND"

Following: "82-10-504"

Insert: "AND 82-11-122"

5. Page 1, line 12 through line 7, page 2.

Strike: section 1 in its entirety

Re-number: subsequent sections

6. Page 3, line 7.

Strike: "triple"

Insert: "double"

~~XXXXXX~~ (continued)

~~XXXXXXXXXX~~

SENATOR DOROTHY ECK

Chairman.

FEBRUARY 23..... 1985....

7. Page 3, lines 8 through 11.

Strike: "(1) An oil and gas developer or operator who fails to provide notice as required by 82-10-503 is guilty of a misdemeanor and is punishable by a fine of not more than \$500."

8. Page 3, line 12.

Strike: "(2)"

9. Page 3, line 13.

Strike: "make"

Insert: "timely pay an installment under"

Following: "damage"

Strike: "payment as required by any damage"

10. Page 3, line 15.

Following: "owner of"

Strike: "three times"

Insert: "twice"

11. Page 3, line 16.

Strike: "such payment"

Insert: "the unpaid installment if the installment payment is not paid within 60 days of receipt of notice of failure to pay from the surface owner"

12. Page 3, following line 16.

Insert: "Section 3. Section 82-11-122, MCA, is amended to read:

"82-11-122. Notice of intention to drill or conduct seismic operations -- notice to surface owner. It is unlawful to commence the drilling of a well for oil or gas without first filing with the board written notice of intention to drill and obtaining a drilling permit as provided in 82-11-134. After the permit is issued, an oil and gas developer or operator as defined under 82-10-502 shall notify the surface owner of his specific intentions before commencing drilling operations. It is unlawful to conduct seismic explorations with explosives without first giving the board a copy of the notice of intention to explore filed with the county under 82-1-103."

NEW SECTION. Section 4. Codification instruction. Section 2 is intended to be codified as an integral part of Title 82, chapter 10, part 5, and the provisions of Title 82, chapter 10, part 5, apply to section 2.

NEW SECTION. Section 5. Extension of authority. Any existing authority of the board of oil and gas conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act."

AND AS AMENDED,

SENATOR DOROTHY ECK

MINUTES OF THE MEETING
NATURAL RESOURCES COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

March 20, 1985

The meeting of the House Natural Resources Committee was called to order by Chairman Dennis Iverson at 4:30 p.m. in Room 312-1 of the State Capitol.

ROLL CALL: All members of the committee were present except for Rep. Asay, who was excused.

SENATE BILL 258: Senate Bill 258 was introduced by the sponsor, Sen. Larry Tveit, District 11. He told the committee that SB 258 would revise laws governing payment for surface damage done in the process of oil and gas development. He told the committee that in many cases, surface owners do not hold the rights to minerals that lie below that land. The mineral rights may supercede surface rights, he said, and occasionally, surface owners receive no notification of a developer's intent to commence drilling for minerals. SB 258 would require notification of intent to develop mineral rights, and spell out the terms of compensation for damage done to surface land in developing those mineral rights.

No proponents nor any opponents addressed SB 258.

Rep. Addy asked how much notice a developer must give to the surface owner, and Sen. Tveit told him that no notice was necessary under current law. Rep. Addy then asked if there would be a penalty under SB 258 for failure to give such notice. Sen. Tveit told him that no penalty could be included in the bill, because the mineral developer would be exercising his option to develop his legal mineral rights. Rep. Addy commented that without a penalty, it appears that SB 258 is "just giving advice."

Rep. Krueger maintained that the holder of the mineral rights is exercising a right to enter property through lease or contract, and lease and contract rights can be overridden by statutory provision. Therefore, he said, the legislature can impose a penalty for failure to give notice.

Rep. Raney suggested that the committee add a time period to the notice provision of the bill. In that way, he said, the penalty could be imposed for failure to give the proper notice, and not imposed for the actual entry onto the land.

Rep. Miles said a notice provision already exists in the general provisions covering oil and gas leasing and exploration.

Senator Tveit closed the hearing on SB 258 by noting that the bill could be delayed until the committee confirms whether notice provisions are covered elsewhere, but urged passage of the other terms of the bill.

SENATE BILL 96: SB 96 was introduced by Sen. Del Gage, District 5. He explained that the bill updates laws pertaining to seismic exploration by making it clear that exploration done by nonexplosive means is covered under the same statutes that cover exploration done with explosives. The bill is basically a response to technological developments in the field of mineral exploration, he said. In addition to covering exploration done with both explosives and nonexplosives, SB 96 makes a needed distinction between seismic and geophysical exploration, said Sen. Gage.

There were no further proponents of the bill, no opponents, and no questions from committee.

Sen. Gage closed by urging a favorable vote on SB 96.

SENATE BILL 377: Sen. Del Gage introduced SB 377, which he sponsored. He explained that the bill provides for 100% recovery of equipment above ground, 300% recovery of other well costs, and 100% recovery of operating costs on oil and gas wells in pooled spacing units if an owner of an interest in the unit refuses to join the unit.

Dennis Hemmer, speaking on behalf of the department of state lands, said the department supports SB 377, because the bill makes the burdens and profits of participation in pooled spacing units equitable to all, and protects the rights of the mineral owner.

No opponents appeared to speak against SB 377.

Rep. Driscoll asked who the owner would be in the situations covered by SB 377, and Sen. Gage told him the owner is the owner of the working interest in the well involved.

Sen. Gage closed without comment.

EXECUTIVE ACTION

SENATE BILL 377: Rep. Jones moved that SB 377 BE CONCURRED IN. Rep. Iverson said that page 3, line 20 should be amended for clarity, and Rep. Addy moved that the line be amended to read "300% of the refusing owner's share". That amendment was unanimously approved.

Rep. Kadas moved that the bill BE CONCURRED IN AS AMENDED.
That motion was unanimously approved.

Rep. Smith agreed to carry the bill on the floor of the House.

SENATE BILL 96: Rep. Cobb moved that SB 96 BE CONCURRED IN.
That motion was passed unanimously, and Rep. Cobb agreed to
carry the bill on the floor of the House.

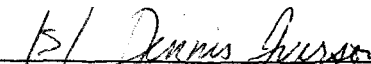
SENATE BILL 258: Rep. Miles said she would like to draft
an amendment for presentation to the committee, and asked
that executive action on SB 258 be postponed.

HOUSE BILL 312: Chairman Iverson told the committee he
would entertain a motion on HB 312, which was heard in
committee on February 23 and tabled at that hearing. Rep.
John Harp moved DO NOT PASS on HB 312, reminding the committee
that HB 312 was the bill sponsored by Rep. Devlin that
would require that federal mineral royalty payments be
paid to counties based on each county's contribution through
mineral extraction. Rep. Harp referred to HB 312 as "just
another run on the highway reconstruction trust" that was
instituted in 1983. Under HB 312, highway reconstruction
money would go to high-wealth counties with low mill levies,
he said.

Rep. Kadas agreed, saying that the four counties that would
benefit most by HB 312 are already enjoying low mill levies.
Those counties are Phillips, with a mill levy of 94.76;
Powder River, with a mill levy of 77.17; Rosebud, with a
mill levy of 70.33; and Fallon, with a mill levy of 73.18.
Conversely, the counties that stand to lose the most through
HB 312 are Daniels, with a mill levy of 168.36; Judith
Basin, with a mill levy of 171.94; Treasure, with a mill
levy of 131.04; and Yellowstone, with a mill levy of 136.52.
HB 312 would reward the counties that are the best off now,"
said Rep. Kadas.

There was no further discussion, and Rep. Harp made a
substitute motion to table the bill, which passed unanimously.

There being no further business before the committee, the
hearing was adjourned at 6:10 p.m.


Rep. DENNIS IVERSON, Chairman

DAILY ROLL CALL

HOUSE NATURAL RESOURCES COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date MARCH 20, 1985

NAME	PRESENT	ABSENT	EXCUSED
IVERSON, Dennis (Chairman)	X		
KADAS, Mike (Vice-Chairman)	X		
ADDY, Kelly	X		
ASAY, Tom			
COBB, John	X		
DRISCOLL, Jerry	X		
GARCIA, Rodney	X		
GRADY, Edward	X		
HARP, John	X		
JONES, Tom	X		
KRUEGER, Kurt	X		
MILES, Joan	X		
MOORE, Janet	X		
O'HARA, Jesse	X		
PETERSON, Mary Lou	X		
RANEY, Bob	X		
REAM, Bob	X		
SMITH, Clyde	X		

MINUTES OF THE MEETING
NATURAL RESOURCES COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

March 25, 1985

The meeting of the House Natural Resources Committee was called to order by Chairman Dennis Iverson at 6:15 p.m. in Room 312-1 of the State Capitol.

ROLL CALL: All members of the committee were present.

SENATE BILL 156: SB 156 was introduced by the sponsor, Sen. Tom Towe, District 46. Sen. Towe told the committee that the bill changes criteria for coal board grants and loans to allow for the eligibility of more counties. Under current law, he said, only Rosebud County is designated as eligible, and if the coal board does not spend a certain portion of its grant money in Rosebud County, it cannot spend any of that money in other counties. SB 156 would allow the board to designate more counties to receive funding without changing the basic structure of the program, said Sen. Towe.

PROPOSERS: Pat Wilson, representing Montco, said that company would be directly affected by SB 156. Coal board grants would help to alleviate potential problems faced by residents of Powder River County, when Montco begins expansion of its projects in the Broadus and Ashland area, she said. She distributed a booklet describing Montco's activities in that area, which is attached as Exhibit 1.

There were no opponents to SB 156, and no questions from the committee.

Rep. Asay agreed to carry SB 156 on the House floor.

SENATE BILL 284: SB 284 was introduced by the sponsor, Sen. Tom Towe, District 46. The bill revises a bill which was passed last session regarding the authority of the coal board to make loans. SB 284 deals specifically with the provisions of 90-6-209 that deal with repayment of coal board loans, said Sen. Towe. It would allow that repayment be made from fees, rentals, admissions, use charges and special assessments. Earlier drafts of the bill allowed that repayment be made from property tax revenues, but those sections were deleted from the bill upon objection by the coal companies that they would then be forced to pay taxes twice on their product, said Sen. Towe.

EXECUTIVE ACTION

SENATE BILL 156: Rep. Kadas moved that SB 156 BE CONCURRED IN. The motion passed without discussion, with Rep. Harp voting no.

SENATE BILL 284: Rep. Cobb moved that SB 284 BE CONCURRED IN. Rep. Driscoll commented that the legislature has worked on conflicting bills regarding coal board money. He said he supports SB 284, but said that at some point, all the bills based on coal board money will have to come together. The bill passed with Rep. Harp voting no.

SENATE BILL 258: Rep. Addy moved that SB 258 BE CONCURRED IN. Rep. Miles moved an amendment she prepared that would refer the notice question in the bill back to the appropriate existing statute. Rep. Krueger suggested that the committee address the issue of adequate notice. He said drillers must have an idea of proposed projects more in advance than three days, and did not think the three-day notice was fair to surface owners.

Rep. Iverson said it is not unusual for a potential driller to check into existing leases, find an available drilling rig, and move into operation in two days' time.

Rep. Krueger maintained that if the legislature is concerned about the surface owner, the three-days' notice provision is inadequate, and said the time period should be longer. Rep. Raney said he agreed with Rep. Krueger on that point.

Rep. Cobb suggested that the notice provision be amended to 10 days, and the House should wait and see how the Senate views that amendment.

Sen. Tveit, the sponsor of the bill, was allowed to comment, and said the three day provision allows adequate notice.

Rep. Krueger again maintained that three days is insufficient time for negotiation or redress, and asked what the problem would be with a ten day provision. Sen. Tveit replied that the holder of the mineral rights has a right of access, and that settlement of damages due to access is not usually a problem. Rep. Krueger asked why there should not be a misdemeanor clause in the bill requiring due notice, and Sen. Tveit said that such a clause would be meaningless because the costs of developing a mineral right are much higher than the potential misdemeanor penalty could be.

Rep. Iverson said he was concerned about the apparent presumption that the landowner is "the good guy and the oilman is a rapist." That is not necessarily so, he said, and the committee should keep in mind that surface and mineral rights are equal property interests under the law.

Rep. Krueger said that if the committee were not willing to add a misdemeanor clause, he would push for an expanded time period for notice. He moved that the bill be amended to allow for no fewer than 14 days' notice by the developer of the mineral rights of proposed activity. That motion failed 9-8. A copy of the roll call vote is attached following the standing committee reports.

Rep. Addy, a supporter of that amendment, said 14 days is not unreasonable, noting that the eminent domain bill passed in committee calls for 30-days' notice.

Rep. Krueger then moved that the notice clause be amended to require 10 days' notice. That motion passed 9-7.

Rep. Addy then moved that SB 258 BE CONCURRED IN AS AMENDED, and that motion passed with Reps. Smith, Cobb and Iverson voting no.

There being no further business before the committee, the meeting was adjourned at 7:40 p.m.



Rep. DENNIS IVERSON, Chairman

DAILY ROLL CALL

HOUSE NATURAL RESOURCES

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date MARCH 25

NAME	PRESENT	ABSENT	EXCUSED
IVERSON, Dennis (Chairman)	X		
KADAS, Mike (Vice-Chairman)	X		
ADDY, Kelly	X		
ASAY, Tom	X		
COBB, John	X		
DRISCOLL, Jerry	X		
GARCIA, Rodney	X		
GRADY, Edward	X		
HARP, John	X		
JONES, Tom	X		
KRUEGER, Kurt	X		
MILES, Joan	X		
MOORE, Janet	X		
O'HARA, Jesse	X		
PETERSON, Mary Lou	X		
RANEY, Bob	X		
REAM, Bob	X		
SMITH, Clyde	X		

STANDING COMMITTEE REPORT

PAGE 1 OF 2

March 25

19 35

SPEAKER:

MR.

NATURAL RESOURCES

We, your committee on

having had under consideration SENATE BILL Bill No. 253

THIRD

reading copy (BLUE)
color

AN ACT REVISING THE LAW RELATING TO COMPENSATION PAYABLE FOR
SURFACE DAMAGE BY OIL AND GAS DEVELOPMENT

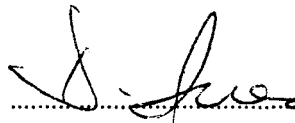
Respectfully report as follows: That SENATE BILL 253 Bill No.

BE AMENDED AS FOLLOWS:

- 1) Title, line 13.
Following: "AND"
Insert: "82-10-503,"
Following: "82-10-504"
Insert: ",,"

CONTINUED ON FOLLOWING PAGE

EX-105



Rep. DENNIS IVERSON

Chairman.

2) Page 3.

Following: line 11

Insert: "Section 1. Section 82-10-503, MCA, is amended to read:

"82-10-503. Notice of drilling operations. In addition to the requirements for geophysical exploration activities governed by Title 82, chapter 1, part 1, the oil and gas developer or operator shall give the surface owner and any purchaser under contract for deed written notice of the drilling operations that he plans to undertake. This notice shall be given to the record surface owner and any purchaser under contract for deed at their addresses as shown by the records of the county clerk and recorder at the time the notice is given. This notice shall sufficiently disclose the plan of work and operations to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property. The notice shall be given no more than 90 days and no fewer than 10 days before commencement of any activity on the land surface."

Renumber: subsequent sections

3) Page 4, line 7.

Strike: "notify the surface owner of his specific intentions"Insert: "comply with the notice requirements of 82-10-503"

4) Page 4, line 13.

Strike: "2"

Insert: "3"

5) Page 4, line 15.

Strike: "2"

Insert: "3"

AND AS AMENDED,

BE CONCURRED IN

ROLL CALL VOTE

HOUSE COMMITTEE NATURAL RESOURCES

DATE 3/25/85 BILL NO. SB 258 TIME 7:30

NAME	AYE	NAY
IVERSON, Dennis (Chairman)		X
KADAS, Mike (Vice-Chairman)	X	
ADDY, Kelly	X	
ASAY, Tom		X
COBB, John		X
DRISCOLL, Jerry		X
GARCIA, Rodney		X
GRADY, Edward		X
HARP, John		
JONES, Tom		X
KRUEGER, Kurt	X	
MILES, Joan	X	
MOORE, Janet	X	
O'HARA, Jesse		X
PETERSON, Mary Lou	X	
RANEY, Bob	X	
REAM, Bob	X	
SMITH, Clyde		X

8 9

Secretary

Chairman

Motion: Amend notice provision to 14 days.
- Krueger

14 days

ROLL CALL VOTE

HOUSE COMMITTEE NATURAL RESOURCES

DATE 3/25/85 BILL NO. SB 258 TIME 7:35

NAME	AYE	NAY
IVERSON, Dennis (Chairman)		X
KADAS, Mike (Vice-Chairman)	X	
ADDY, Kelly	X	
ASAY, Tom		X
COBB, John		X
DRISCOLL, Jerry	X	
GARCIA, Rodney		X
GRADY, Edward		X
HARP, John		
JONES, Tom		X
KRUEGER, Kurt	X	
MILES, Joan	X	
MOORE, Janet	X	
O'HARA, Jesse	X	
PETERSON, Mary Lou	X	
RANEY, Bob	X	
REAM, Bob	X	
SMITH, Clyde		X

9 7

Secretary

Chairman

Motion: Amend notice provision to 10 days
- Krueger

10 days

SENATE BILL NO. 258

INTRODUCED BY TVEIT, E. SMITH, GILBERT,

HOLLIDAY, POFF, SCHYE, ABRAMS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW RELATING TO COMPENSATION PAYABLE FOR SURFACE DAMAGE BY OIL AND GAS DEVELOPMENT; PROVIDING A PENALTY FOR FAILURE TO GIVE NOTICE OF PLANNED DRILLING OPERATIONS; PROVIDING TRIPLE DOUBLE DAMAGES FOR FAILURE TO MAKE STIPULATED DAMAGE PAYMENTS; REQUIRING AN OIL AND GAS DEVELOPER OR OPERATOR TO NOTIFY THE SURFACE OWNER OF HIS SPECIFIC INTENTIONS BEFORE COMMENCING DRILLING OPERATIONS; AMENDING SECTIONS 82-10-502 AND 82-10-503, 82-10-504, AND 82-11-122, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-10-502, MCA, is amended to read:

"82-10-502. Definitions. As used in this part, the following definitions apply:

{1}--"Agricultural production"--means the production of any growing grass, crops, or trees attached to the surface of the land or farm animals with commercial value.

{2}--"Oil and gas operations"--means the seismic or other exploration for or drilling of an oil and gas well that requires entry upon the surface estate and is begun subsequent to June 1, 1981, and the production operations

directly related to the seismic or other exploration or drilling.

{3}--"Oil and gas developer or operator"--means the person who acquires the oil and gas lease for the purpose of extracting oil and gas.

{4}--"Oil and gas estate"--means an estate in or ownership of all or part of the oil and gas underlying a specified tract of land.

{5}--"Surface owner"--means the person who holds record title to or has a purchaser's interest in the surface of the land."

SECTION 1. SECTION 82-10-503, MCA, IS AMENDED TO READ:

"82-10-503. Notice of drilling operations. In addition to the requirements for geophysical exploration activities governed by Title 82, chapter 1, part 1, the oil and gas developer or operator shall give the surface owner and any purchaser under contract for deed written notice of the drilling operations that he plans to undertake. This notice shall be given to the record surface owner and any purchaser under contract for deed at their addresses as shown by the records of the county clerk and recorder at the time the notice is given. This notice shall sufficiently disclose the plan of work and operations to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property. The notice shall be given no

REFERENCE BILL

1 more than 90 days and no fewer than 10 days before
 2 commencement of any activity on the land surface."

3 Section 2. Section 82-10-504, MCA, is amended to read:

4 "82-10-504. Surface damage and disruption payments.

5 (1) The oil and gas developer or operator shall pay the
 6 surface owner a sum of money or other compensation equal to
 7 the amount of damages sustained by the surface owner for
 8 loss of agricultural production and income, lost land value,
 9 and lost value of improvements caused by drilling
 10 operations.

11 (2) The amount of damages may be determined by any
 12 formula mutually agreeable between the surface owner and the
 13 oil and gas developer or operator. When determining damages,
 14 consideration shall be given to the period of time during
 15 which the loss occurs.

16 (3) The surface owner may elect to ~~be paid damages in~~
 17 receive annual installments damage payments over a period of
 18 time, except that the surface owner shall be compensated by
 19 a single sum payment for harm caused by exploration only.

20 (4) The payments contemplated by this section may only
 21 cover land directly affected by drilling operations and
 22 production. Payments under this section are intended to
 23 compensate the surface owner for damage and disruption; no
 24 person may reserve or assign that compensation apart from
 25 the surface estate except to a tenant of the surface

1 estate."

2 NEW SECTION. Section 3. Penalty -- triple DOUBLE
 3 damages. {1}-An oil and gas developer or operator who fails
 4 to provide notice as required by 82-10-503 is guilty of a
 5 misdemeanor and is punishable by a fine of not more than
 6 \$500.

7 {2} An oil and gas developer or operator who fails to
 8 make TIMELY PAY AN INSTALLMENT UNDER any annual damage
 9 payment as required by any damage agreement negotiated with
 10 a surface owner is liable for payment to the surface owner
 11 of three-times TWICE the amount of such payment THE UNPAID
 12 INSTALLMENT IF THE INSTALLMENT PAYMENT IS NOT PAID WITHIN 60
 13 DAYS OF RECEIPT OF NOTICE OF FAILURE TO PAY FROM THE SURFACE
 14 OWNER.

15 SECTION 4. SECTION 82-11-122, MCA, IS AMENDED TO READ:

16 "82-11-122. Notice of intention to drill or conduct
 17 seismic operations -- notice to surface owner. It is
 18 unlawful to commence the drilling of a well for oil or gas
 19 without first filing with the board written notice of
 20 intention to drill and obtaining a drilling permit as
 21 provided in 82-11-134. After the permit is issued, an oil
 22 and gas developer or operator as defined under 82-10-502
 23 shall notify the surface owner of his specific intentions
 24 COMPLY WITH THE NOTICE REQUIREMENTS OF 82-10-503 before
 25 commencing drilling operations. It is unlawful to conduct

1 seismic explorations with explosives without first giving
2 the board a copy of the notice of intention to explore filed
3 with the county under 82-1-103."

4 NEW SECTION. SECTION 5. CODIFICATION INSTRUCTION.
5 SECTION 2 3 IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART
6 OF TITLE 82, CHAPTER 10, PART 5, AND THE PROVISIONS OF TITLE
7 82, CHAPTER 10, PART 5, APPLY TO SECTION 2 3.

8 NEW SECTION. SECTION 6. EXTENSION OF AUTHORITY. ANY
9 EXISTING AUTHORITY OF THE BOARD OF OIL AND GAS CONSERVATION
10 TO MAKE RULES ON THE SUBJECT OF THE PROVISIONS OF THIS ACT
11 IS EXTENDED TO THE PROVISIONS OF THIS ACT.

-End-